

Application No. 09/936,757
Reply to Office Action of April 28, 2003

REMARKS

Claims 1, 2, 4-7 and 14-18 are currently pending in the application, as amended. Claims 1, 16 and 17 have been amended to their form prior to the July Amendment. That is, claims 1, 16 and 17 have been amended to the form of the claims that were pending prior to the current Office Action. Claim 15 has been rewritten into independent form including all of the limitations of base claim 1. New claim 18 has been inserted and specifically claims that the square-tubular case includes four walls with an extracting outlet or tear-off portion that is provided on a side wall and extends to portions of front and rear walls, wherein unit packages are removed from the outlet or tear-off portion by grasping the unit package through the extracting outlet or tear-off portion at the front and rear walls. New claim 18 is identical to amended claim 1 of the July Amendment. Support for these amendments and new claim 18 can be found in the original claims, Figs. 1, 3-8 and 11 and throughout the specification, including paragraph numbers 30, 42, 43 and 52. Accordingly, no new matter has been added.

DRAWINGS

The Examiner approved the proposed drawing corrections, filed in an amendment dated February 28, 2003, but stated that corrected drawings are required in response to the current Office Action. Three sheets of formal drawings (labeled Replacement Sheets) including Figs. 5, 6, 9, 10 and 12 incorporating the approved corrections were enclosed with the July Amendment. Applicants respectfully request that the Examiner approve the replacement drawings submitted with the July Amendment.

CLAIMS

Claim Rejections - 35 U.S. C. § 103

The Examiner rejected claims 1, 2, 4 and 16 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 1,272,411 (Fitz Gerald) in view of U.S. Patent No. 2,299,027 (Novak) and U.S. Patent No. 4,971,197 (Worley). The Examiner argues that Fitz Gerald discloses each of the elements of claims 1, 2, 4 and 16 except for a square-tubular case and unit

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packages containing a plurality of stick-like articles, which Novak and Worley disclose. The Examiner further argues that it would have been obvious to one having ordinary skill in the art to modify Fitz Gerald into a square-tubular case holding unit packages containing a plurality of stick-like articles upon reviewing Worley and Novak. Applicants respectfully traverse this rejection.

Referring to Figs. 1-3, the present invention is directed to a dispensing package 1 comprised of a square-tubular case that houses stacked unit packages 6. Each package 6 contains a plurality of stick-like articles or batteries 7 aligned in parallel with the front wall 11 of the square-tubular case. An extracting outlet or tear-off portion 5 is provided in a side wall 12, 13 of the square-tubular case and forms an extracting outlet for extracting unit packages 6 from the case. The extracting outlet or tear-off portion 5 is inclined along the side wall 12, 13 so that a front end is lower than a rear end. A bottom or base 4 of the case is also inclined so that a front side of the bottom 4 is lower than a rear side. The extracting outlet or tear-off portion 5 is positioned in the side wall 12, 13 such that the unit package 6 that is to be placed on the top surface of the bottom 4 is taken out of the outlet 5 from one end of the stick-like articles.

Referring to Figs. 1-6, Fitz Gerald is directed to a display carton 1 constructed such that articles or packages contained therein may be automatically fed, one at a time, through a discharge outlet 15 (Column 1, lines 16-20). The carton 1 includes front and rear members, 2, 3 and side members 4, 5 as well as a false bottom constructed of a slice of cardboard divided into a plurality of flanges 10-13 (Figs. 6). The false bottom is positioned in the carton 1 such that a false bottom flange 10 is inclined with a depending flange 11 extending from a bottom of the carton 1 upwardly along the back wall 3, a front flange 12 extending up the front wall 2 and a lip 13 extending perpendicularly from the front wall 2 to support articles above the lowest section of the false bottom flange 10. Tongues 14 are cut along the side walls 4, 5 behind the discharge outlet 15 and are folded inwardly, generally perpendicular to the side walls 4, 5 to support the inclined false bottom flange 10. When the carton 1 is filled with articles, the individual articles are urged toward the lowest portion of the false bottom flange 10 by the incline of the false bottom and may be removed from the carton 10 by pressing against one end of the article through one side opening 15 and dispensing the single article through the opposite side opening

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15. The cut out created by the flap 14 in the side of the carton 1 is not large enough to dispense articles and is only large enough to permit the flap 14 to be bent perpendicularly to support the false bottom flange 10.

Referring to Figs. 1-3, Novak is directed to a display carton including a pair of compartments A, B separated by a panel C. The compartments A, B have a generally square-tubular shape.

Referring to Figs. 1-4, Worley discloses a package 10 binding a plurality of individual sets 12 of dry cell batteries 14.

Amended claim 1 recites, *inter alia*, a square-tubular case housing stacked unit packages... aligned in parallel with the front wall of the square-tubular case... and an extracting outlet or a tear-off portion for forming an extracting outlet for extracting one of the unit packages, the extracting outlet or tear-off portion being inclined so that a front end is lower than a rear end,... said extracting outlet or tear-off portion is provided on a side wall of said square-tubular case such that the unit package, which is to be placed on the top surface of the bottom, is taken out of the outlet from one end of the stick-like articles in the unit package. In addition, claim 16 recites, *inter alia*, a square tubular case housing stacked unit packages, each unit package including a plurality of batteries aligned in parallel with the front wall of the square-tubular case... an extracting outlet or tear-off portion for extracting unit packages... said extracting outlet or tear-off portion is provided on a side wall of said square-tubular case such that the unit package is taken out of the outlet from one end of the batteries in the unit package.

Applicants respectfully submit that one having ordinary skill in the art would not modify Fitz Gerald in view of Novak and/or Worley to include a plurality of stacked unit packages in a square-tubular case that are dispensed from a side extracting outlet. Specifically, if Fitz Gerald were modified to house stacked unit packages aligned in parallel with the front wall of the case, the stacked unit packages would become stuck on the lip 13 and shelf 16 of Fitz Gerald and none of the unit packages would be extracted from the outlet. In addition, even if the unit packages were able to by-pass the lip to rest on the bottom, the unit packages could not be dispensed from the side outlet that is designed to accommodate only a single battery. Further,

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the lip 13 or shelf 16 of Fitz Gerald is designed to protect the single article that is to be dispensed from the openings 15 from any articles above the article to be dispensed. Therefore, the unit packages would become jammed on the lip when a single stick-like article in the package contacts the lip and the remainder of the articles in the package tip off the end of the lip. Accordingly, one having ordinary skill in the art would not attempt to place a plurality of unit packages into the container of Fitz Gerald because the articles would become stuck within the container and would not be dispensable therefrom.

Applicants also submit that any combination of Fitz Gerald, Worley and Novak would not disclose each and every element of amended claims 1 or 16. Specifically, Fitz Gerald discloses a cut out used to create a flap 14 that supports a false bottom flange 10 behind a dispensing opening 15 of the carton 1. The opening in the side of the carton left from cutting the flap 14 is not large enough to dispense a unit package comprised of a plurality of stick-like articles therefrom and there is no disclosure in Novak or Worley that would direct one having ordinary skill in the art to enlarge the cutout such that a unit package aligned in parallel with a front wall of the container may be taken out of a side outlet from one end of the stick-like articles. Therefore, Applicants respectfully submit that each of the elements of amended claims 1 and 16 is not disclosed by any combination of Fitz Gerald, Novak and/or Worley.

Further, there is not motivation for one having ordinary skill in the art to modify Fitz Gerald to include the side extracting outlet for extracting a unit package from a stack of unit packages aligned in parallel with a front wall of a dispensing case, as is claimed claims 1 and 16 of the present invention. The only motivation to include an extracting outlet to accommodate extraction of the claimed unit packages is shown in the disclosure of the present application. Therefore, only improper hindsight would motivate one having ordinary skill in the art to insert the side extracting outlet into the display carton of Fitz Gerald.

In view of each of the above arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of amended claims 1 and 16 based on unpatentability over Fitz Gerald in view of Novak and Worley.

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Claims 2 and 4 are dependent upon claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 2 and 4 based on unpatentability over Fitz Gerald in view of Novak and Worley, based upon the same arguments presented above with respect to claim 1.

The Examiner rejected claims 5 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak and further in view of U.S. Patent No. 5,460,322 (Carlson). The Examiner argues that the combination of Fitz Gerald, Worley and Novak disclose each of the elements of claims 5 and 14 except for a suspending piece and an tear-off portion for forming an extracting outlet, which Carlson discloses.

Claims 5 and 14 are dependent upon amended claim 1. Applicants respectfully submit that claims 5 and 14 are patentable over the combination of Fitz Gerald in view of Worley, Novak and Carlson for the same reasons presented above with respect to claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of amended claims 5 and 14 based on unpatentability over Fitz Gerald in view of Novak, Worley and Carlson.

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak and further in view of U.S. Patent No. 5,836,478 (Weiss). The Examiner argues that the combination of Fitz Gerald, Worley and Novak disclose each of the elements of claim 6 except for a front wall being transparent, which Weiss discloses. Applicants respectfully traverse this rejection.

Claim 6 is dependent upon amended claim 1. Applicants respectfully submit that claim 6 is patentable over the combination of Fitz Gerald, Worley, Novak and Weiss for the same reasons presented above for claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claim 6 based upon the combination of Fitz Gerald, Worley, Novak and Weiss.

The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak and further in view of U.S. Patent No. 3,927,809

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(Klein). The Examiner argues that the combination of Fitz Gerald, Worley and Novak discloses each of the elements of claim 7 except for a partition, which Klein discloses. Applicants respectfully traverse this rejection.

Claim 7 is dependent upon amended claim 1. Applicants respectfully submit that claim 7 is patentable over the combination of Fitz Gerald, Worley, Novak and Klein for the same reasons presented above for claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claim 7 based upon the combination of Fitz Gerald, Worley, Novak and Klein.

The Examiner also rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald. The Examiner argues that Fitz Gerald discloses each of the elements of claim 17 except for a square-tubular case. The Examiner further argues that it would have been obvious to one having ordinary skill in the art to construct the case of Fitz Gerald such that it is square to accommodate the shape of a product to be placed therein.

Claims 17 recites, *inter alia*, a square-tubular case including a bottom and side walls... an extracting outlet or a tear-off portion being formed in one of said side walls, said extracting outlet or tear-off portion including a front end, a rear end, and a mid-portion between the front and rear ends, said extracting outlet or tear-off portion being inclined so that said front end is lower than said rear end. Applicants respectfully traverse this rejection.

Applicants respectfully submit that Fitz Gerald does not disclose each and every element of amended claim 17 and each and every element of amended claim 17 would not be obvious to one having ordinary skill in the art upon reviewing Fitz Gerald. Specifically, Fitz Gerald does not disclose an inclined extracting outlet or tear-off portion formed in a side wall of a square-tubular case including a front end, a rear end and a mid-portion between the front and rear ends. Fitz Gerald discloses an extracting outlet in a side wall of a case that is positioned in a lower, front portion of the side wall. Although the dispensing opening 15 of Fitz Gerald does have an inclined lower edge from front to back, the dispensing opening does not include front and rear ends and a mid-portion therebetween on a side of a square-tubular case. Fitz Gerald does disclose a gap or hole created from a flap 14 that is bent perpendicular to the side wall and

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is inclined to support a false bottom 10 in the case of Fitz Gerald, however, the hole or opening is designed to be large enough to create a flap that supports the false bottom flange and is too small for an article within the case to be dispensed therethrough. The only hole in the side wall of Fitz Gerald large enough to dispense an article is the dispensing opening 15. Therefore, the combination of the front dispensing opening and the inclined hole in the side wall of the container of Fitz Gerald does not meet the claim limitation of an inclined side extracting outlet including a front end, a rear end and a mid-portion between the front and rear ends claimed in claim 17 of the present invention. Further, as was discussed above, there is no motivation for one having ordinary skill in the art to make such a modification to Fitz Gerald. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claim 17 based upon unpatentability over Fitz Gerald.

New Claim 18

New claim 18 contains subject matter similar to claim 1 in addition to reciting, inter alia, said extracting outlet or the tear-off portion is provided on a side wall and extends to portions of the front and rear walls of said square-tubular case such that the unit package... is removed by pulling one end of the stick-like articles in the unit package through the opening in the side wall by grasping the unit package through the extracting outlet at the front and rear walls. Applicants respectfully submit that the subject matter of new claim 18 is patentable over Fitz Gerald, Novak and Worley or any combination thereof.

Specifically, Fitz Gerald, Worley and Novak or any combination thereof would not disclose each and every element of new claim 18. Even if Fitz Gerald were modified to be square there would still be no extracting outlet that extends to the front and rear walls of the dispenser. Instead Fitz Gerald discloses removing single items from a container by pushing them at one end through a first side wall outlet so that the items protrude out of and can be removed at a second side wall outlet. In contrast, new claim 18 claims removal of items through a single side wall outlet by grasping the packages through the extracting outlet at the front and rear walls and pulling the packages out of the opening. Based upon the above, Applicants respectfully submit that the subject matter of new claim 18 is patentable over Fitz Gerald, Novak and Worley

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or any combination thereof. In addition, Applicants respectfully submit that new claim 18 is patentable over any combination of Fitz Gerald, Novak and Worley for the same reasons presented above for claim 1.

ALLOWABLE SUBJECT MATTER

The Examiner objected to claim 15 as being dependent upon a rejected base claim but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 15 has been rewritten into independent form including each of the limitations of base claim 1. Accordingly, Applicants respectfully submit that amended claim 15 is in condition for allowance and such action is respectfully requested.

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CONCLUSION

In view of the foregoing Supplemental Amendment and remarks, Applicants respectfully submit that the present application, including claims 1, 2, 4-7 and 14-18, is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

KATSUHIKO KUMAKURA *et al*

September 29, 2003 By: Dennis Ruth 51,519 fax
(Date)

MARTIN G. BELISARIO

Registration No. 32,886

AKIN GUMP STRAUSS HAUER & FELD LLP

One Commerce Square

2005 Market Street, Suite 2200

Philadelphia, PA 19103-7013

Telephone: 215-965-1200

Direct Dial: 215-965-1303

Facsimile: 215-965-1210

E-Mail: mbelisario@akingump.com

MGB/DJB:ccr

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